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August 31, 2022

VIA ECF

The Honorable Denise L. Cote  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *IN re LATAM Airlines Group S.A.*, Case No. 22-cv-5891

Dear Judge Cote:

We write on behalf of appellees LATAM Airlines Group S.A. and its affiliated debtors and debtors-in-possession in response to yesterday's letter from the TLA Claimholders about the Ninth Circuit's decision in *In re PG&E Corporation*, No. 21-16043 ("PG&E").

*PG&E* cannot help the TLA Claimholders; if anything, it confirms that their new (and unpreserved) theory on appeal is meritless. *PG&E* is a solvent debtor case; and its holding and the potential relief it affords is based solely on the solvent debtor exception. *See, e.g., PG&E* at 9 ("The question we must answer is this: what rate of postpetition interest must a solvent debtor pay creditors whose claims are designated as unimpaired pursuant to section 1124(1) of the Bankruptcy Code?"), 32 ("Because *PG&E* was solvent, however, plaintiffs' claims *did* entail an equitable right to receive postpetition interest under the solvent-debtor exception."). Because TLA is *not* solvent, *PG&E* offers no aid for the TLA Claimholders.

As to the new claim the TLA Claimholders seek to present on appeal – that unsecured creditors of an *insolvent* debtor must be paid post-petition interest or else be deemed impaired – this claim is barred at the threshold because it was not presented below. *See* Appellees' Br. at

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18-41. But even if this new theory could be raised on appeal, the Ninth Circuit joins the “monolithic mountain of authority”<sup>1</sup> in rejecting it. It held as follows:

Prior to PG&E’s bankruptcy filing, plaintiffs possessed a contractual right to interest on debts not paid – either at rates stipulated by their contracts or the California default rate of ten percent. But this contractual right, as applied to postpetition debts, was superseded by the Code – specifically, by § 502(b)(2)’s prohibition on the inclusion of “unmatured interest” as part of a claim. As a result, plaintiffs’ claims do not include any contractual right to postpetition interest. Moreover, plaintiffs do not have a legal right to interest on their claims, as no provision of the Code expressly provides for postpetition interest for unimpaired creditors.

*PG&E* at 31-32 (citations omitted). In reaching this holding, the Ninth Circuit stated:

As our sibling circuits have held, an alteration of pre-bankruptcy rights that occurs by operation of the Code does not result in impairment. *Ultra Petroleum*, 943 F.3d at 763 (“The plain text of § 1124(1) requires that ‘the plan’ do the altering.”); *PPI Enters.*, 324 F.3d at 204 (“[W]e must examine whether the plan itself is a source of limitation on a creditor’s legal, equitable, or contractual rights.”); *see also In re Sylmar Plaza, L.P.*, 314 F.3d 1070, 1075 (9th Cir. 2002) (“In enacting the Bankruptcy Code, Congress made a determination that an eligible debtor should have the opportunity to avail itself of a number of Code provisions which adversely alter creditors’ contractual and nonbankruptcy rights.” (quotation omitted)).

*PG&E* at 31 n.11. The Ninth Circuit thus joined every other reported decision in expressly rejecting the new and meritless theory the TLA Claimholders seek to pursue on appeal.

The TLA Claimholders seek to obscure *PG&E*’s headline holding by pointing to, and mischaracterizing, observations the court made in the course of its opinion. But every step of the court’s analysis is grounded in solvency and the solvent debtor exception. The TLA Claimholders characterize *PG&E* as holding that section 1124(1) “demand[s] that an unimpaired creditor’s rights – including the equitable right to bargained-for postpetition interest when a debtor is solvent – remain unaltered.” Letter at 2. In fact, the Ninth Circuit’s holding confirms that unsecured creditors do *not* have a “legal” or “contractual” right to interest – but instead, *only* if a debtor is solvent, they would have an “equitable” right to such interest under the solvent debtor exception. *PG&E* at 31-32; *id.* at 30 n. 9 (“Our holding ‘recognizes that the equitable prong of § 1124 applies differently when the debtor is solvent’—as *PG&E* undisputedly is in this case—by entitling claim holders to postpetition interest as an equitable right.”). Again, this cannot help the TLA Claimholders because TLA is not solvent. Still further, the Ninth Circuit held that awarding interest under the solvent debtor exception depends on a determination that the equities support it. *PG&E* at 33. Here, the Bankruptcy Court has already determined that such an award would *not* be equitable, *see* A0681, a finding the TLA Claimants did not challenge in their opening brief on appeal.

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<sup>1</sup> *See In re Ultra Petroleum Corp.*, 943 F.3d 758, 760 (5<sup>th</sup> Cir. 2019).

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Respectfully submitted,

/s/ David H. Herrington

David H. Herrington

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S.A. and its affiliated debtors and  
debtors-in-possession*